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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-808

ROBERT C. MILLER,

Petitioner,

v.

TED W. BROWN, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

BRIEF FOR RESPONDENTS HAMILTON COUNTY BOARD OF ELECTIONS, AND ITS MEMBERS OR EMPLOYEES, JOHN A. WIETHE, GORDON H. SCHERER, EARL T. BARNES, SIDNEY WEIL, JR., DANIEL A. RUEHLMANN AND MAURICE ALLEN IN OPPOSITION

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QUESTION PRESENTED

Whether the Twenty-Second Amendment to the Constitution of the United States violates any federally protected right of petitioner.

CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE V

The Congress whenever two-thirds of both Houses shall deem it necessary, shall propose Amendment to this Constitution, or, on the Application of the Legislatures of two-thirds of several States, shall call a Convention for proposing Amendments, which in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

TWENTY-SECOND AMENDMENT

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President, or acting as President during the remainder of such term.

STATEMENT OF THE CASE

Petitioner's statement of the case accurately sets forth in chronological order the progression of the case from

the date of the filing of the Complaint until the final Order of the United States Court of Appeals For The Sixth Circuit.

ARGUMENT

There Is No Substantial Constitutional Question Involved

The Twenty- Second Amendment to the Constitution of the United States was proposed by Congress on March 24, 1947. It was ratified by a total of 41 states. In March 1, 1951, Jess Larson, Administrator of General Services, certified that it had been adopted by the requisite number of states. 16 F.R. 2019.

Article V of the Constitution provides in pertinent part as follows:

> The Congress whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States.

Once an Amendment is adopted in conformity with the provisions of this Article it is valid to all intents and purposes as part of the Constitution. Petitioner does not even claim that the Twenty-Second Amendment was not validly proposed and ratified. His sole claim is that the limitation violates his right to vote for the president "unlimited by a limitation on terms in office."

Respondent submits that there is no provision of the Constitution which could be construed as conferring such a right. However, any possible claim of such a right was eliminated by the adoption of the Twenty-Second Amend-

ment. Compare: *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 330 (1964); *Warner* v. *United States*, 299 U.S. 59, 64 (1936); *Premier-Pabst Sales Corp.* v. *Grosscup*, 12 F.Supp. 970, 972 (Ed. Pa. 1935) affd. 298 U.S. 226 (1936).

CONCLUSION

There is no substantial constitutional question involved herein. None of the considerations, set forth in Rule 19 of the Rules of this Court, governing review on certiorari, are present in this case. The decisions of the lower court are clearly correct.

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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